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STIPULATION.

Filed May 7, 1953.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, LUBBOCK DIVISION.

No. 708 Criminal.

UNITED STATES OF AMERICA,
Plaintiff,

versus

O. L. SHANNON,
Defendant.

It is hereby agreed and stipulated by and between O. L. Shannon defendant in the above-entitled and numbered cause, and appellant in the cause of O. L. Shannon, appellant, v. United States of America, appellee, No. 14,416 in the United States Court of Appeals for the Fifth Circuit, and United States of America, acting by and through their respective attorneys of record as follows:

1.

That Government's exhibits 1, 2 and 3 introduced in evidence at the trial of said cause in the United States District Court were inadvertently and by error and accident omitted from the record which was transmitted by the Clerk of the trial Court to the United States Court of Appeals and said exhibits are material to both parties.

2.

That for the purpose of correcting the said omission from the record the Clerk of the United States District Court for the Northern District of Texas, Lubbock Divi-

sion, be and is hereby directed to prepare and certify a supplemental record consisting of the Government's exhibits 1, 2 and 3 above mentioned and transmit the same to the Clerk of the United States Court of Appeals for the Fifth Circuit.

Dated at Lubbock, Texas, the 26th day of May, 1953.

KENNETH BAWLIN,
Attorney for O. L. Shannon, Defendant in the trial Court and appellant in the United States Court of Appeals.

A. W. CHRISTIAN,
(A. W. Christian),
Assistant United States Attorney, Attorney for United States of America.

FORM C
REVISED 8-1-46

UNITED STATES DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION

UNIFORM GRAIN STORAGE AGREEMENT

A74-6-CCC-8[illegible]
Code 7475

JUN 2 [illegible]

1. This Agreement, made and entered into this First day of June, 1949, by and between Commodity Credit Corporation, hereinafter referred to as "Commodity", and O. L. Shannon, with principal place of business at Sudan, Texas, hereinafter referred to as the "warehouseman";

WITNESSETH:

2. WHEREAS, the warehouseman owns or operates an elevator or warehouse located at Sudan, [illegible] Street, on the F. R. St. Railroad, in the city of Sudan, County of Lamb, and the State of Texas, and known as Shannon Elevator 2, hereinafter referred to as the "warehouse"; and

3. WHEREAS, Commodity desires that the facilities of the warehouse be made available with respect to grain as defined in this agreement, owned by, or in the possession of, Commodity or any other agency of the United States under the general supervision of the Secretary of Agriculture, or in the possession of any lending agency in connection with a loan made available by Commodity, or, as of the date of deposit, grain which is deposited in the warehouse by a producer, and later becomes security for a loan made, or made available, by Commodity (such grain being hereinafter referred to as "the grain" or as "grain subject to the terms of this agreement");

4. NOW, THEREFORE, in consideration of the covenants and agreements herein contained, and for other good and valuable considerations, the parties hereto covenant and agree as follows:

5. The warehouseman shall receive, store (up to the capacity made available by him), insure (except as hereinafter provided), condition, and load out the grain in accordance with the directions of Commodity, at the applicable rates specified in the Schedule of Rates attached hereto.

6. Upon receipt by the warehouseman of the grain, or when grain in store is purchased by Commodity, the warehouseman shall issue, in such form as meets the approval of Commodity, either negotiable or nonnegotiable, warehouse receipts as Commodity may request, representing the grain and shall indicate on such receipts the method by which the grain was received by him, accompanied by inbound weight certificates, when available, and, when requested by Commodity or the owner of the grain, inspection certificates describing the test weight and special grading factors, if any, and specifying the percentage of damaged kernels, foreign material, moisture content, and grain of other classes, and protein certificates or documents describing the quality of the grain, provided that with the consent of the depositor, a protein certificate representing wheat received by wagon, truck or less than carload lots may be issued on the basis of the station average for protein.

7. The warehouseman shall keep all the grain which is stored in the warehouse in store in the warehouse described in this agreement, and shall at all times maintain in the warehouse a stock of grain of the class, grade, and quality of the grain described in the outstanding warehouse receipts and accompanying certificates or documents, sufficient to deliver from the warehouse the grain described in such receipts and accompanying certificates or documents, and to the extent that facilities of the warehouse are made available, he shall store all corn stored hereunder, and such other of the grain as Commodity may request, in special bins, according to class and grade, so as to preserve its identity.

8. The warehouseman shall load out or deliver to the holder of any warehouse receipt grain of the same class, grade, quantity and quality, or better, and, in the case of wheat, of a protein content within three-tenths of one percent, as that described by the surrendered warehouse receipt and accompanying certificates or documents, and sheet of country-run quality equal to that received into the warehouse, except that, in the case of grain which was received by wagon, truck, or less than carload lots, the quality may be the average of the quality described in the surrendered warehouse receipts and accompanying documents or certificates. At locations where no official grading services or protein laboratories are available, the warehouseman may load out or deliver wheat of any merchantable grade which is fairly representative of the wheat described in the warehouse receipts, provided, however, that such wheat shall be subject to discounts as provided in section 11. For the purposes of this section and section 11, the grade, quality, and protein content of wheat represented by a group of warehouse receipts included in one shipping order shall be the weighted average of the grade, quality, and protein content of the wheat represented by such group of warehouse receipts. Wheat not meeting the requirements of this section may be rejected, and if accepted shall be subject to the discounts provided in section 11.

9. Without in any way limiting his obligation under the other provisions of this agreement, the warehouseman shall insure, and at all times keep insured, in his own name, all the grain for the full market value thereof, against loss or damage by fire, lightning, inherent explosion, windstorm, cyclone, or tornado, and, in the event of any loss or damage to the grain, or to the warehouse, whether or not such loss was insured against, he shall immediately notify Commodity and the holders of the warehouse receipts representing such grain, as the holders appear on the records of the warehouseman, and he shall at his own expense promptly take the steps necessary to collect any moneys which may be due as indemnity for such loss or damage, including the bringing of suit, and, as soon as collected, shall pay to the holders of such warehouse receipts such moneys as may be collected for the loss or damage. In the event the warehouseman insures against hazards to the grain not specified herein, such insurance shall inure to the benefit of the holders of the warehouse receipts. In the event of loss or damage

to the grain, all charges provided for by this agreement with respect to the grain so lost or damaged shall be paid until and cease as of the date of such loss or damage.

10. The warehouseman shall observe the carriers' tariff and loading requirements, and shall indemnify Commodity against minimum weight penalties and demurrage, except those that are incurred due to circumstances beyond his control, and he shall assume all inbound switching charges which are recoverable or which are absorbed by the carrier on outbound shipments.

11. In the event that any of the grain which is loaded out by the warehouseman is found - on the basis of official weights and grades at the point of storage, or, if official weights and grades are not available at such point, on the basis of official weights and grades at destination or at the inspection point shown on the shipping order furnished the warehouseman, which unless otherwise agreed shall be the customary location, on the route of shipment, of an inspector licensed under the United States Grain Standards Act - to be of a class, grade, quantity or quality lower than that described by warehouse receipts, and accompanying certificates or documents, surrendered by Commodity, the warehouseman shall indemnify Commodity in an amount equal to the difference between the value of the grain loaded out and the value of the grain described by the warehouse receipts and accompanying certificates or documents, on the basis of cash prices current at the terminal market customarily applicable to grain stored in the warehouse at the time when the grain was shipped. In the case of wheat received by the warehouseman by rail or barge and in the case of all of the grain other than wheat, settlement shall be made on the basis of each shipping order. In the case of wheat received by wagon or truck, settlement shall be made on the basis of each year's crop stored at the warehouse, Commodity to issue shipping orders based on the weighted average of such year's crop, and debits and credits to be established accordingly on each shipping order, the debits and credits to be set off against each other, and final cash settlement made after the date the last grain of such year's crop is loaded out or sold or otherwise disposed of, any credits not set off against debits of such crop year to be dropped and not carried forward.

12. Unless the warehouseman operated the warehouse under a license issued by the Secretary of Agriculture under the United States Warehouse Act, he shall comply with such conditions as may be prescribed by Commodity prior to the execution of this agreement. The warehouseman shall furnish Commodity such bond or bonds as may from time to time be required by Commodity, and, at any time during business hours, he shall permit Commodity to inspect the warehouse and its equipment, inspect, measure or take inventories of grain stored therein, and examine the stock records, receipt books, insurance policies, and other documents pertaining to such grain.

13. Upon the request of Commodity or the owner of the grain, the warehouseman shall furnish a sample thereof, agreed by the warehouseman and the owner of the grain to be a representative sample.

14. Commodity shall cause to be paid, with respect to the grain owned by Commodity, upon the presentation of a proper invoice, all accrued charges at the applicable rates specified in the Schedule of Rates attached hereto, as of June 30, September 30, December 31, and March 31, of each year (unless the warehouse receipts are surrendered prior to any such date, in which case payments shall be made as of such surrender date), and Commodity shall cause to be paid with respect to the grain in the possession of, but not owned by Commodity, or in the possession of any lending agency in connection with any loan made or made available by Commodity, upon presentation of a proper invoice to the holder of the warehouse receipts representing such grain, all accrued charges at the applicable rates specified in the Schedule of Rates, as of the applicable renewal date of this agreement, provided, however, that at the option of Commodity, a semi-annual payment of warehouse charges not to exceed one-half of the annual storage rate, plus receiving charges for the grain which has been in store for at least six months after the annual renewal date of the agreement, may be made for the grain in the possession of, but not owned by Commodity, or in the possession of any lending agency, in connection with a loan made or made available by Commodity.

15. The Director of the Grain Branch, Production and Marketing Administration, the Directors of the Chicago, Kansas City, Minneapolis, and Portland offices of said Grain Branch, or the duly authorized representatives of any of such officials, or any other duly authorized representative of Commodity, may act for and on behalf of Commodity in carrying out the provisions of this agreement.

16. The warehouseman, at his own expense, shall take all necessary steps to keep all of the grain which is stored in the warehouse, whether commingled, specially binned or otherwise stored so as to preserve its identity, from going out of condition, and shall condition any such grain which is out of condition or in danger of becoming so, to the extent that the warehouse is equipped to do so, but, if after the exercise of such care in receiving, storing, and conditioning of such grain as a reasonably prudent owner thereof would exercise, deterioration cannot be prevented by conditioning, the warehouseman shall immediately notify Commodity of such fact, if the warehouse receipts held by Commodity are the oldest outstanding receipts representing the commingled grain which is out of condition or in danger of becoming so, or if such grain has been specially binned under this agreement, and shall dispose of, or care for, such grain at the expense of and in accordance with the directions of Commodity.

17. In the case of identity-preserved or specially binned grain, or in the case of grain received for handling only, the warehouseman shall deliver the identical grain received, and shall be liable for shrinkage and for deficiencies in the quality of such grain only in the event such shrinkage or deficiency in quality results from his failure to use due care, or his failure to provide appropriate warehousing services: Provided, however, That if such grain is commingled with other grain, the warehouseman's liability shall be as defined in section 11. Grain other than corn shall not be deemed to be specially binned or identity-preserved unless authorized by the owner or Commodity, and unless the warehouse receipts are plainly marked "specially binned" or "identity-preserved" with the bin number shown thereon.

18. The warehouseman may store the grain, either in bulk or, when customary, in sacks, but unless the holder of the warehouse receipts directs loading out in sacks, the warehouseman shall load out such grain in bulk.

19. Except as otherwise directed by Commodity, the warehouseman shall hold and, subject to the provisions of this section, may use any freight bill or transit tonnage slip which comes into the warehouseman's possession, in

connection with such grain. [illegible] iately u[illegible] receipt of such freight bi[illegible] transit tonnage slip, the warehouseman shall furnish to the holder of the warehouse receipt or Commodity, in the form prescribed by it, a statement showing the original shipping point, date and number of waybill, date and number of the freight bill, the name of the carrier, the transit weight, the rate paid in and the amount collected, and the unused transit privileges, and the warehouseman shall, in accordance with the carrier's tariff and rules of the carrier's agent, record in his own name each such freight bill or transit tonnage slip evidencing transit privileges and take all steps necessary to assure the shipper such transit privileges. Subject to the provisions of sections 6 and 17, the warehouseman, in connection with the sale, transfer, or loading out of any of such grain, may substitute for grain shipped under any such freight bill or transit tonnage slip in accordance with the request of Commodity or the owner of the grain, other grain and freight bills or transit tonnage slips of value equal, and transit privileges comparable, to those described in the statement furnished to Commodity or the holder of the warehouse receipt. The warehouseman and the holder of the warehouse receipt shall adjust any difference in value due to such exchange. If the warehouseman and the holder of any warehouse receipt representing such grain agree, the warehouseman and such holder may exchange the grain and billing received for a quantity of grain which has not been shipped by rail, equivalent in value to the grain and billing received.

20. In the event the warehouse receipts are transferred to any persons not entitled to the benefits of this agreement, there shall be affixed to such warehouse receipts, prior to such transfer, a statement of unpaid charges which accrued under this agreement, or a statement showing the period for which the rates provided for herein are applicable, and the warehouseman shall not charge for services rendered during that period an amount in excess of that computed in accordance with any such statement.

21. The period for which the Schedule of Rates shall apply shall begin with the date on which each lot of grain is stored in the warehouse, or the date on which each lot of grain stored in the warehouse becomes subject to the terms of this agreement, whichever is later, and shall end one year later, and subsequent periods for each such lot of grain shall be annual, except that the first period for all grain, except soybeans and corn, which on any applicable renewal date of this agreement is in the possession of, but not owned by, Commodity or in the possession of a lending agency, in connection with a loan made or made available by Commodity, shall end with such renewal date, and subsequent periods shall be annual. The first period for soybeans in the possession of, but not owned by, Commodity or in the possession of any lending agency, in connection with a loan made or made available by Commodity, shall end September 30 following the date the soybeans were stored, and the first period for corn in the possession of, but not owned by, Commodity or in the possession of any lending agency in connection with a loan made or made available by Commodity, shall end October 31 following the date the corn was stored, and subsequent periods for each such lot of soybeans and corn shall be annual. Any period for which the Schedule of Rates applies shall, in any event, end (1) upon transfer of the warehouse receipts to anyone not entitled to the benefits of this agreement, on the date of such transfer, and (2) in the case of shipment by Commodity, upon the date specified in the shipping instructions to the warehouseman, unless a delay in shipment is occasioned by circumstances beyond the warehouseman's control, then on the date of shipment, but in no event earlier than the date on which the warehouse receipts are surrendered.

22. The weights and grades of all grain received into the warehouse shall be the official weights and grades at the point of storage, if official weights and grades can be determined at that point, otherwise the weights and grades shall be determined by the best available means at the point of storage, and, upon the request of the owner of the grain, the grades shall be determined by the grading laboratory maintained under the supervision of the State Field Office of the Production and Marketing Administration of the State where the warehouse is located, or any grading laboratory qualified to issue official grade certificates on the basis of sample taken by a licensed sampler, or a sample which the owner and warehouseman agree to be representative, except that in no event shall unofficial weights and grades prevail over official weights and grades subsequently determined.

23. Any agency of the United States under the general supervision of the Secretary of Agriculture shall be entitled to the services and facilities of the warehouseman with respect to grain owned by or in the possession of such agency upon the same term and conditions as set out in this agreement with respect to grain owned by or in the possession of Commodity.

24. For the purpose of this agreement, the following terms shall be construed to mean, respectively,

(a) GRAIN - Wheat, Corn, Rye, Barley, Grain Sorghums, Soybeans, Flaxseed, and any other grain or farm products customarily handled in warehouses in the same manner as grain.

(b) RECEIVING - Receiving and unloading from cars, boats, barges, trucks, or other conveyances, and elevating into, bulking, cutting-in, or piling in the warehouse.

(c) CONDITIONING - Elevating, screening, blowing, cooling, reracking, repair of sacks, fumigating, or such other operations as may be necessary to preserve the class, grade, and quality of the grain.

(d) LOADING OUT - Loading out, including cutting and emptying sacks, and wharfage from the warehouse into cars, boats, barges, trucks, or other conveyances.

(e) OFFICIAL GRADES - Grades established by an inspector licensed under the United States Grain Standards Act in accordance with the Official Grain Standards of the United States in effect at the time the grades were established.

(f) OFFICIAL WEIGHTS - Weights established by a licensed weighmaster, or one whose weight certificates are recognized by common carriers as official in the payment of railroad claims for losses in transit.

25. This agreement shall become effective except as provided in Paragraph 26 hereof upon its signature on behalf of Commodity, and shall continue in full force and effect until the first May 31 thereafter with respect to all warehouses located in the States of Alabama, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Oklahoma, South Carolina, and Texas, and until the first June 30 thereafter with respect to all warehouses located in all other States. This agreement shall be renewed automatically from year to year thereafter, unless either party notifies the other, by written notice at least 30 days prior to the next renewal date, of his election to terminate the agreement upon such renewal date. If the warehouseman elects to terminate this agreement

on any renewal date, and at the time of such termination there is stored in the warehouse grain which has not been stored for the complete period used in computing charges, the storage charges with respect to such grain, whether paid or not, shall be adjusted to the storage charges for such entire period in proportion to the part of such period during which such grain was stored.

26. The terms of this agreement shall prevail over the written or printed terms of the warehouse receipts representing the grain, and this agreement shall supersede any existing Uniform Grain Storage Agreement between the warehouseman and the Secretary of Agriculture, as of the last annual renewal date of such agreement, except that charges for services performed under any such prior agreement shall be paid in accordance with the terms of such prior agreement, and the storage charges under this agreement shall not begin to accrue until the expiration of any free time to which the holder of any warehouse receipt is entitled under the terms of any such prior agreement.

27. The warehouseman shall not make any charge for any service not covered by this agreement unless such service is performed upon the prior authorization of Commodity, except that Commodity shall reimburse the warehouseman for payment made by him of usual charges for services required in connection with the loading out of grain for Commodity.

28. In the event of the failure of the warehouseman to load out any grain in accordance with the terms of this agreement, time being of the essence of this provision, Commodity shall have the right, unless such failure is excused by law, to terminate this agreement, and, in the event either of the parties hereto shall default in the performance of any other provision herein, the other party, if such default is not cured within fifteen (15) days after a written notice is mailed to the party in default, shall have the right to terminate this agreement without thereby being deprived of any claim for damages on account of such default.

29. This agreement, or any claims arising hereunder, shall not be assigned in whole or in part. No convict labor shall be employed in carrying out any provisions of this agreement. No Member of, or Delegate to, Congress, or any Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefit to arise therefrom, except that this provision shall not be construed to extend to their interest in any incorporated company, if the agreement be for the general benefit of such corporation or company.

30. The warehouseman, in the performance of this agreement, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall include a similar provision in all subcontracts entered into in connection with the provisions of this agreement.

31. The warehouseman shall have fulfilled his obligation to notify Commodity as required in this agreement only if such notice is served in writing on the Director, Field Office, Grain Branch, Production and Marketing Administration, in the area in which the warehouse is located.

32. This agreement shall be executed by the signature of the warehouseman and of a duly authorized representative of Commodity.

COMMODITY CREDIT CORPORATION

By _____
CONTRACTING OFFICER - CCC
(Title)
DALLAS 2, TEXAS

JUL 25 1949

In presence of Mary J. Brennan .

O. L. Shannon
(Warehouseman)
owner

By _____
(Title)

JUN 20 1949
SHIPPING & STORAGE
DIVISION
DALLAS

C.C.C. Form [redacted]
REVISED [redacted]

UNITED STATES DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION

UNIFORM GRAIN STORAGE AGREEMENT

ASCS-[redacted]
Code [redacted]

JUN 2 1957

U.S. DEPT. OF AGRI.

1. This Agreement, made and entered into this First day of July, 1949, by and between the Commodity Credit Corporation, hereinafter referred to as "Commodity", and O. L. Shannon of principal place of business at Sudan, Texas hereinafter referred to as the "warehouseman";

WITNESSETH:

2. WHEREAS, the warehouseman owns or operates an elevator or warehouse located at Sudan, Texas Street, on the P & SF Santa Fe Railroad, in the city of Sudan, [redacted] County of Lamb, and the State of Texas, and known as Shannon Elevator D, hereinafter referred to as the "warehouse"; and

3. WHEREAS, Commodity desires that the facilities of the warehouse be made available with respect to grain as defined in this agreement, owned by, or in the possession of, Commodity or any other agency of the United States under the general supervision of the Secretary of Agriculture, or in the possession of any lending agency in connection with a loan made available by Commodity, or, on or of the date of deposit, grain which is deposited in the warehouse by a producer, and later becomes security for a loan made, or made available, by Commodity (such grain being hereinafter referred to as "the grain" or as "grain subject to the terms of this agreement");

4. NOW, THEREFORE, in consideration of the covenants and agreements herein contained, and for other good and valuable considerations, the parties hereto covenant and agree as follows:

5. The warehouseman shall receive, store (up to the capacity made available by him), insure (except as hereinafter provided), condition, and load out the grain in accordance with the directions of Commodity, at the applicable rates specified in the Schedule of Rates attached hereto.

6. Upon receipt by the warehouseman of the grain, or when grain in store is purchased by Commodity, the warehouseman shall issue, in such form as meets the approval of Commodity, either negotiable or nonnegotiable, warehouse receipts as Commodity may request, representing the grain and shall indicate on such receipts the method by which the grain was received by him, accompanied by inbound weight certificates, when available, and, when requested by Commodity or the owner of the grain, inspection certificates describing the test weight and special grading factors, if any, and specifying the percentage of damaged kernels, foreign material, moisture content, and grain of other classes, and protein certificates or documents describing the quality of the grain, provided that with the consent of the depositor, a protein certificate representing wheat received by wagon, truck or less than carload lots may be issued on the basis of the station average for protein.

7. The warehouseman shall keep all the grain which is stored in the warehouse and covered in this agreement, and shall at all times maintain in the warehouse a stock of grain of the class, grade, and quality of the grain described in the outstanding warehouse receipts and accompanying certificates or documents, sufficient to deliver from the warehouse the grain described in such receipts and accompanying certificates or documents, and to the extent that facilities of the warehouse are made available, he shall store all such stored hereunder, and such other of the grain as Commodity may request, in special bins, according to class and grade, so as to preserve the identity.

8. The warehouseman shall load out or deliver to the holder of any warehouse receipt grain of the same class, grade, quantity and quality, or better, and, in the case of wheat, of a protein content within three-tenths of one percent, as that described by the surrendered warehouse receipt and accompanying certificates or documents, and wheat of country-run quality equal to that received into the warehouse, except that, in the case of grain which was received by wagon, truck, or less than carload lots, the quality may be the average of the quality described in the surrendered warehouse receipts and accompanying documents or certificates. At locations where an official grading services or protein laboratories are available, the warehouseman may load out or deliver wheat of any merchantable grade which is fairly representative of the wheat described in the warehouse receipts, provided, however, that such wheat shall be subject to discounts as provided in section 11. For the purposes of this section and section 11, the grade, quality, and protein content of wheat represented by a group of warehouse receipts included in one shipping order shall be the weighted average of the grade, quality, and protein content of the wheat represented by such group of warehouse receipts. Wheat not meeting the requirements of this section may be rejected, and if accepted shall be subject to the discounts provided in section 11.

9. Without in any way limiting his obligation under the other provisions of this agreement, the warehouseman shall insure, and at all times keep insured, in his own name, all the grain for the full market value thereof, against loss or damage by fire, lightning, inherent explosion, windstorm, cyclone, or tornado, and, in the event of any loss or damage to the grain, or to the warehouse, whether or not such loss was insured against, he shall immediately notify Commodity and the holders of the warehouse receipts representing such grain, or the holders appear in the records of the warehouseman, and he shall at his own expense promptly take the steps necessary to collect any damage which may be due as indemnity for such loss or damage, including the bringing of suit, and, as soon as collected, shall pay to the holders of such warehouse receipts such damage as may be collected for the loss or damage. In the event the warehouseman insures against hazards to the grain not specified herein, such insurance shall inure to the benefit of the holders of the warehouse receipts. In the event of loss or damage

to the grain, all charges provided for by this agreement with respect to the grain so lost or damaged shall be paid until and cease as of the date of such loss or damage.

10. The warehouseman shall observe the carriers' tariff and loading requirements, and shall indemnify Commodity against minimum weight penalties and demurrage, except those that are incurred due to circumstances beyond his control, and he shall assume all inbound switching charges which are recoverable or which are absorbed by the carrier on outbound shipments.

11. In the event that any of the grain which is loaded out by the warehouseman is found - on the basis of official weights and grades at the point of storage, or, if official weights and grades are not available at such point, on the basis of official weights and grades at destination or at the inspection point shown on the shipping order furnished the warehouseman, which unless otherwise agreed shall be the customary location, on the route of shipment, of an inspector licensed under the United States Grain Standards Act - to be of a class, grade, quantity or quality lower than that described by warehouse receipts, and accompanying certificates or documents, surrendered by Commodity, the warehouseman shall indemnify Commodity in an amount equal to the difference between the value of the grain loaded out and the value of the grain described by the warehouse receipts and accompanying certificates or documents, on the basis of cash prices current at the terminal market customarily applicable to grain stored in the warehouse at the time when the grain was shipped. In the case of wheat received by the warehouseman by rail or barge and in the case of all of the grain other than wheat, settlement shall be made on the basis of each shipping order. In the case of wheat received by wagon or truck, settlement shall be made on the basis of each year's crop stored at the warehouse, Commodity to issue shipping orders based on the weighted average of such year's crop, and debits and credits to be established accordingly on each shipping order, the debits and credits to be set off against each other, and final cash settlement made after the date the last grain of such year's crop is loaded out or sold or otherwise disposed of, any credits not set off against debits of such crop year to be dropped and not carried forward.

12. Unless the warehouseman operated the warehouse under a license issued by the Secretary of Agriculture under the United States Warehouse Act, he shall comply with such conditions as may be prescribed by Commodity prior to the execution of this agreement. The warehouseman shall furnish Commodity such bond or bonds as may from time to time be required by Commodity, and, at any time during business hours, he shall permit Commodity to inspect the warehouse and its equipment, inspect, measure or take inventories of grain stored therein, and examine the stock records, receipt books, insurance policies, and other documents pertaining to such grain.

13. Upon the request of Commodity or the owner of the grain, the warehouseman shall furnish a sample thereof, agreed by the warehouseman and the owner of the grain to be a representative sample.

14. Commodity shall cause to be paid, with respect to the grain owned by Commodity, upon the presentation of a proper invoice, all accrued charges at the applicable rates specified in the Schedule of Rates attached hereto, as of June 30, September 30, December 31, and March 31, of each year (unless the warehouse receipts are surrendered prior to any such date, in which case payments shall be made as of such surrender date), and Commodity shall cause to be paid with respect to the grain in the possession of, but not owned by Commodity, or in the possession of any lending agency in connection with any loan made or made available by Commodity, upon presentation of a proper invoice to the holder of the warehouse receipts representing such grain, all accrued charges at the applicable rates specified in the Schedule of Rates, as of the applicable renewal date of this agreement, provided, however, that at the option of Commodity, a semi-annual payment of warehouse charges not to exceed one-half of the annual storage rate, plus receiving charges for the grain which has been in store for at least six months after the annual renewal date of the agreement, may be made for the grain in the possession of, but not owned by Commodity, or in the possession of any lending agency, in connection with a loan made or made available by Commodity.

15. The Director of the Grain Branch, Production and Marketing Administration, the Directors of the Chicago, Kansas City, Minneapolis, and Portland offices of said Grain Branch, or the duly authorized representatives of any of such officials, or any other duly authorized representative of Commodity, may act for and on behalf of Commodity in carrying out the provisions of this agreement.

16. The warehouseman, at his own expense, shall take all necessary steps to keep all of the grain which is stored in the warehouse, whether commingled, specially binned or otherwise stored so as to preserve its identity, from going out of condition, and shall condition any such grain which is out of condition or in danger of becoming so, to the extent that the warehouse is equipped to do so, but, if after the exercise of such care in receiving, storing, and conditioning of such grain as a reasonably prudent owner thereof would exercise, deterioration cannot be prevented by conditioning, the warehouseman shall immediately notify Commodity of such fact, if the warehouse receipts held by Commodity are the oldest outstanding receipts representing the commingled grain which is out of condition or in danger of becoming so, or if such grain has been specially binned under this agreement, and shall dispose of, or care for, such grain at the expense of and in accordance with the directions of Commodity.

17. In the case of identity-preserved or specially binned grain, or in the case of grain received for handling only, the warehouseman shall deliver the identical grain received, and shall be liable for shrinkage and for deficiencies in the quality of such grain only in the event such shrinkage or deficiency in quality results from his failure to use due care, or his failure to provide appropriate warehousing services: Provided, however, That if such grain is commingled with other grain, the warehouseman's liability shall be as defined in section 11. Grain other than corn shall not be deemed to be specially binned or identity-preserved unless authorized by the owner or Commodity, and unless the warehouse receipts are plainly marked "specially binned" or "identity-preserved" with the bin number shown thereon.

18. The warehouseman may store the grain, either in bulk or, when customary, in sacks, but unless the holder of the warehouse receipts directs loading out in sacks, the warehouseman shall load out such grain in bulk.

19. Except as otherwise directed by Commodity, the warehouseman shall hold and, subject to the provisions of this section, may use any freight bill or transit tonnage slip which come into the warehouseman's possession, in

connection with such grain. Immediately upon receipt of such freight bills or transit tonnage slips, the warehouseman shall furnish to the holder of the warehouse receipt or Commodity, in the form prescribed by it, a statement showing the original shipping point, date and number of waybill, date and number of the freight bill, the name of the carrier, the transit weight, the rate paid in and the amount collected, and the unused transit privileges, and the warehouseman shall, in accordance with the carrier's tariff and rules of the carrier's agent, record in his own name such freight bill or transit tonnage slip evidencing transit privileges and take all steps necessary to secure the shipper such transit privileges. Subject to the provisions of sections 8 and 17, the warehouseman, in connection with the sale, transfer, or loading out of any of such grain, may substitute for grain shipped under any such freight bill or transit tonnage slip in accordance with the request of Commodity or the owner of the grain, other grain and freight bills or transit tonnage slips of value equal, and transit privileges comparable, to those described in the statement furnished to Commodity or the holder of the warehouse receipt. The warehouseman and the holder of the warehouse receipt shall adjust any difference in value due to such exchange. If the warehouseman and the holder of any warehouse receipt representing such grain agree, the warehouseman and such holder may exchange the grain and billing received for a quantity of grain which has not been shipped by rail, equivalent in value to the grain and billing received.

20. In the event the warehouse receipts are transferred to any person not entitled to the benefits of this agreement, there shall be affixed to such warehouse receipts, prior to such transfer, a statement of unpaid charges which accrued under this agreement, or a statement showing the period for which the rates provided for herein are applicable, and the warehouseman shall not charge for services rendered during that period an amount in excess of that computed in accordance with any such statement.

21. The period for which the Schedule of Rates shall apply shall begin with the date on which each lot of grain is stored in the warehouse, or the date on which each lot of grain stored in the warehouse becomes subject to the terms of this agreement, whichever is later, and shall end one year later, and subsequent periods for each such lot of grain shall be annual, except that the first period for all grain, except soybeans and corn, which on any applicable renewal date of this agreement is in the possession of, but not owned by, Commodity or in the possession of a loading agency, in connection with a loan made or made available by Commodity, shall end with such renewal date, and subsequent periods shall be annual. The first period for soybeans in the possession of, but not owned by, Commodity or in the possession of any loading agency, in connection with a loan made or made available by Commodity, shall end September 30 following the date the soybeans were stored, and the first period for corn in the possession of, but not owned by, Commodity or in the possession of any loading agency in connection with a loan made or made available by Commodity, shall end October 31 following the date the corn was stored, and subsequent periods for each such lot of soybeans and corn shall be annual. Any period for which the Schedule of Rates applies shall, in any event, end (1) upon transfer of the warehouse receipts to anyone not entitled to the benefits of this agreement, on the date of such transfer, and (2) in the case of shipment by Commodity, upon the date specified in the shipping instructions to the warehouseman, unless a delay in shipment is occasioned by circumstances beyond the warehouseman's control, then on the date of shipment, but in no event earlier than the date on which the warehouse receipts are surrendered.

22. The weights and grades of all grain received into the warehouse shall be the official weights and grades at the point of storage, if official weights and grades can be determined at that point, otherwise the weights and grades shall be determined by the best available means at the point of storage, and, upon the request of the owner of the grain, the grades shall be determined by the grading laboratory maintained under the supervision of the State Field Offices of the Production and Marketing Administration of the State where the warehouse is located, or any grading laboratory qualified to issue official grade certificates on the basis of sample taken by a licensed sampler, or a sample which the owner and warehouseman agree to be representative, except that in no event shall unofficial weights and grades prevail over official weights and grades subsequently determined.

23. Any agency of the United States under the general supervision of the Secretary of Agriculture shall be entitled to the services and facilities of the warehouseman with respect to grain owned by or in the possession of such agency upon the same terms and conditions as set out in this agreement with respect to grain owned by or in the possession of Commodity.

24. For the purpose of this agreement, the following terms shall be construed to mean, respectively,

(a) GRAIN - Wheat, Corn, Rye, Barley, Grain Sorghums, Soybeans, Flaxseed, and any other grain or farm products customarily handled in warehouses in the same manner as grain.

(b) RECEIVING - Receiving and unloading from cars, boats, barges, trucks, or other conveyances, and elevating into, bulking, cutting-in, or piling in the warehouse.

(c) CONDITIONING - Reelevating, screening, blowing, cooling, resacking, repair of sacks, fumigating, or such other operations as may be necessary to preserve the class, grade, and quality of the grain.

(d) LOADING OUT - Loading out, including cutting and emptying sacks, and wharfage from the warehouse into cars, boats, barges, trucks, or other conveyances.

(e) OFFICIAL GRADES - Grades established by an inspector licensed under the United States Grain Standards Act in accordance with the Official Grain Standards of the United States in effect at the time the grades were established.

(f) OFFICIAL WEIGHTS - Weights established by a licensed weighmaster, or one whose weight certificates are recognized by common carriers as official in the payment of railroad claims for losses in transit.

25. This agreement shall become effective except as provided in Paragraph 26 hereof upon its signature on behalf of Commodity, and shall continue in full force and effect until the first May 31 thereafter with respect to all warehouses located in the States of Alabama, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Oklahoma, South Carolina, and Texas, and until the first June 30 thereafter with respect to all warehouses located in all other States. This agreement shall be renewed automatically from year to year thereafter, unless either party notifies the other, by written notice at least 30 days prior to the next renewal date, of his election to terminate the agreement upon such renewal date. If the warehouseman elects to terminate this agreement

on any renewal date, and on the date of such termination there is stored in the warehouse grain which has not been stored for the complete period used in computing charges, the storage charges with respect to such grain, whether paid or not, shall be refunded by the storage charges for such entire period in proportion to the part of such period during which such grain was stored.

25. The terms of this agreement shall prevail over the written or printed terms of the warehouse receipts representing the grain, and this agreement shall supersede any existing Uniform Grain Storage Agreement between the warehouseman and the Secretary of Agriculture, as of the last annual renewal date of such agreement, except that charges for services performed under any such prior agreement shall be paid in accordance with the terms of such prior agreement, and the storage charges under this agreement shall not begin to accrue until the expiration of any free time to which the holder of any warehouse receipt is entitled under the terms of any such prior agreement.

27. The warehouseman shall not make any charge for any service not covered by this agreement unless such service is performed upon the prior authorization of Commodity, except that Commodity shall reimburse the warehouseman for payment made by him of usual charges for services required in connection with the loading out of grain for Commodity.

28. In the event of the failure of the warehouseman to load out any grain in accordance with the terms of this agreement, time being of the essence of this provision, Commodity shall have the right, unless such failure is excused by law, to terminate this agreement, and, in the event either of the parties hereto shall default in the performance of any other provision herein, the other party, if such default is not cured within fifteen (15) days after a written notice is mailed to the party in default, shall have the right to terminate this agreement without thereby being deprived of any claim for damages on account of such default.

29. This agreement, or any claims arising hereunder, shall not be assigned in whole or in part. No convict labor shall be employed in carrying out any provisions of this agreement. No Member of, or Delegate to, Congress, or any Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefit to arise therefrom, except that this provision shall not be construed to extend to their interest in any incorporated company, if the agreement be for the general benefit of such corporation or company.

30. The warehouseman, in the performance of this agreement, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall include a similar provision in all subcontracts entered into in connection with the provisions of this agreement.

31. The warehouseman shall have fulfilled his obligation to notify Commodity as required in this agreement only if such notice is served in writing on the Director, Field Office, Grain Branch, Production and Marketing Administration, in the area in which the warehouse is located.

32. This agreement shall be executed by the signature of the warehouseman and of a duly authorized representative of Commodity.

COMMODITY CREDIT CORPORATION

By _____
CONTRACTING OFFICER (CCC)
ROOM 217 - [illegible]
DALLAS 2, TEXAS

JUL 25 1949

In presence of Mary Bowman

(Warehouseman)

By O. L. Shannon
Owner
(Title)

COMMODITY CREDIT CORPORATION FORM 99 (6-7-50) FORMERLY CCC Form 99

U. S. DEPARTMENT OF AGRICULTURE
PRODUCTION AND MARKETING ADMINISTRATION
COMMODITY CREDIT CORPORATION

UNIFORM GRAIN STORAGE AGREEMENT

No. 871-5-000-515

1. This Agreement, made and entered into this First day of June, 1950, by and between Commodity Credit Corporation, hereinafter referred to as "Commodity", and D. L. Shannon d/b/a Shannon Elevator, with principal place of business at Dodan, Texas, hereinafter referred to as the "warehouseman";

WITNESSETH:

2. WHEREAS, the warehouseman represents that he owns or operates the elevator(s) or warehouse(s) located in the state(s) of Texas and described on the attached "Schedule of Warehouses" and that each elevator(s) or warehouse(s), hereinafter referred to as the "warehouse", has the equipment and facilities which are listed in his application for approval under the Uniform Grain Storage Agreement for the receiving, handling, conditioning, warehousing, storing and loading out of grain; and

3. WHEREAS, Commodity desires that the facilities of the warehouse be made available with respect to grain as defined in this Agreement, owned by, or in the possession of, Commodity or any other agency of the United States under the general supervision of the Secretary of Agriculture, or to the possession of any lending agency in connection with a loan made available by Commodity, or, as of the date of deposit, grain which is deposited in the warehouse by a producer, and later is delivered to Commodity under a price support "Purchase Agreement", or becomes security for a loan made, or made available, by Commodity (such grain being hereinafter referred to as "the grain" or as "grain subject to the terms of this agreement"); it

4. NOW, THEREFORE, in consideration of the premises, the parties hereto covenant and agree as follows:

5. AGREEMENT TO COVER ALL THE GRAIN ACCEPTED - All the grain accepted by the warehouseman shall be received, stored (if the grain is to be stored) conditioned up to the capacity made available by him, conditioned, handled out and shipped as requested by the owner or other authorized person or agency and in accordance with the provisions of this agreement and the applicable Uniform Grain Storage Agreement Schedule of Rates (hereinafter referred to as "Schedule of Rates");

6. BASIS OF WHICH GRAIN IS RECEIVED OR STORED - (a) All the grain stored in the warehouse shall be deemed to be stored commingled with other grain, and the responsibility of the warehouseman with respect thereto shall be as if stored commingled, unless Commodity has specially contracted the grain to be stored identity preserved in such a manner that the actual grain deposited (and no other) may be delivered to the holder of the warehouse receipt, and unless the warehouse receipt or accompanying certificates is plainly marked in a manner satisfactory to Commodity that the grain is stored identity preserved. Grain subject to the terms of this agreement accepted by the warehouseman for storage may be regarded as so stored identity preserved only to the extent that he makes space available for that purpose.

(b) Grain subject to the terms of this agreement accepted by the warehouseman for handling only which is not of a storable grade and quality shall be handled identity preserved. If the grain accepted for handling only is of storable grade and quality, it shall be deemed to be commingled with other grain, and the responsibility of the warehouseman with respect thereto shall be as if stored commingled, in the absence of a special agreement between Commodity and the warehouseman that it shall be handled identity preserved.

7. OBLIGATION TO MAINTAIN STOCKS IN WAREHOUSE - (a) With respect to the grain stored commingled, the warehouseman shall at all times maintain in the warehouse indicated on the warehouse receipts and in which the grain was originally deposited for storage a stock of grain of the quantity, class, grade, and quality which he is obligated to deliver under the warehouse receipts.

(b) With respect to the grain which is stored identity preserved, the warehouseman shall at all times maintain the identical grain in the warehouse indicated in the warehouse receipt.

8. DETERMINATION OF RECEIVED WEIGHTS AND GRADES - The class, grade, quality and quantity of all the grain received into the warehouse, whether for storage or for handling only, and whether it is to be commingled or identity preserved, shall be determined on the basis of official weights and grades at the warehouse location, if official weights and grades can be determined at that point, otherwise the weights and grades shall be determined by the best available means at the warehouse location. And, upon the request of the owner of the grain or the warehouseman, the grades shall be determined by the grading laboratory maintained under the supervision of the State Office of the Production and Marketing Administration of the State where the warehouse is located, or any grading laboratory qualified to issue official grain certificates, on the basis of a sample taken by a licensed sampler, or a sample which the owner and warehouseman agree to be representative.

9. WAREHOUSE RECEIPTS AND CERTIFICATES - (a) With respect to the grain which is accepted by the warehouseman for storage, the warehouseman shall upon receipt of the grain, or when grain is stored in purchased by Commodity, issue, in form approved by Commodity, negotiable or nonnegotiable warehouse receipts as requested by the person or agency entitled thereto and shall indicate thereon the manner by which the grain was received by him (i.e., wagon, truck, rail, barge, ship, etc.). The warehouseman shall, if requested, make available to Commodity all available official weight, inspection, and protein certificates and shall, if requested, execute in such form as Commodity may prescribe, a supplemental certificate to accompany the warehouse receipt, setting out all grading factors shown on the official inspection and protein certificates. When official weight, inspection and protein certificates are not available, the warehouseman shall, if requested by Commodity, execute in such form as Commodity shall prescribe, a supplemental certificate to accompany the warehouse receipt, setting out the class, grade, percentage of damage, test weight, foreign material content, protein content, moisture content, and any other grading factors affecting the quality of the grain, as determined in accordance with section 8.

(b) With respect to the grain which is accepted by the warehouseman for handling only, the warehouseman shall execute a certificate, on such form as Commodity may prescribe, as to the quantity, class, grade, test weight, percentage of damage, foreign material content, protein content, moisture content, and any other grading factors affecting the quality of the grain, as determined in accordance with section 8.

10. RESPONSIBILITY FOR CONDITION OF GRAIN - (a) The warehouseman, at his own expense, shall take all necessary steps to keep all of the grain which is stored in the warehouse, whether commingled or identity preserved, free

going out of condition, and shall condition any such grain which is out of condition or in danger of becoming so, to the extent that the warehouseman is equipped to do so. The warehouseman shall promptly notify Commodity if any of the grain requires drying, and if authorized by Commodity, shall promptly dry the grain if the warehouse is equipped with drying facilities, payment therefor to be made at a rate agreed to by Commodity and the warehouseman or, if no rate is agreed to, at the warehouseman's customary rate, except that no payment shall be made for drying which is occasioned by negligence on the part of the warehouseman. If after the exercise of such care in receiving, storing, and conditioning of such grain as a reasonably prudent owner thereof would exercise, deterioration cannot be prevented by conditioning an examination by an inspection at the expense of the warehouseman (such inspection to be performed by an inspector licensed under the United States Grain Standards Act or by an inspector agreed upon promptly by the warehouseman and Commodity) the warehouseman shall immediately notify Commodity of such fact, if the warehouse receipts held by Commodity are the oldest outstanding receipts representing the commingled grain which is out of condition, or in danger of becoming so, or if such grain is stored identity preserved under this agreement, and shall dispose of, or care for, such grain at the expense of and in accordance with the directions of Commodity. Unless the warehouseman fails to exercise due care or fails to comply with the directions of Commodity, he shall be liable for deterioration in the quality of such grain which is determined to be out of condition or in danger of becoming so only until the date he notifies Commodity or the date such inspection is performed, whichever is later.

(b) Commodity hereby designates the warehousemen as its agent for the purpose of effecting the removal of the most or any bin of grain stored identity preserved, in order for the warehousemen to comply with his obligation to condition such grain.

11. LOAD OUT REQUIREMENTS - (a) If rail facilities are not available at the elevator(s) or warehouse(s) described on the attached "Schedule of Warehouses", the warehousemen shall upon surrender of warehouse receipts representing the grain stored in such elevator(s) or warehouse(s), when so requested by Commodity, deliver the grain into railroad cars or other transportation conveyance at the delivery point indicated in column 8, "Schedule of Warehouses", and the provisions of this agreement, including the requirement for insurance, shall apply to such grain until loaded into the transportation conveyance and accepted by the carrier.

(b) Upon the surrender of warehouse receipts representing grain subject to the terms of this agreement which is stored commingled at a location where official grades and quality determinations are available, the warehousemen shall load out grain of the same class and quantity as that described on the warehouse receipts and accompanying documents, and:

(i) If Commodity surrenders warehouse receipts representing grain of different numerical grades on a loading order calling for the load out of grain of a uniform grade and quality, the warehousemen shall, if he be able to do so, load out grain of a uniform grade and quality equal to the weighted average of all grades and qualities described on the warehouse receipts and accompanying documents. If such weighted average quality is not by the usual delivery on the loading order, and if no car accepted by Commodity falls below the numerical grade called for by the loading order, such delivery shall be accepted without settlement for quality differences. If the warehousemen is unable to load out grain of such uniform grade and quality against the warehouse receipts surrendered, he shall so notify Commodity before loading out the grain so that an appropriate understanding may be reached with respect to loading out the uniform grade and quality.

(ii) If the warehousemen notifies Commodity that he cannot load out the uniform grade and quality called for by the loading order and an understanding is not reached with respect to loading out a uniform grade and quality, or if the loading order does not call for a uniform grade and quality, the warehousemen shall load out grain equal to the numerical grade and to the weighted average quality described on the warehouse receipts and accompanying documents for each numerical grade. Any cars falling below the applicable numerical grade may be rejected by Commodity or accepted and settlement, as provided in section 10, made for the difference between the value of such car of grain and the value of grain of the weighted average quality shown on the warehouse receipts and accompanying documents calling for the numerical grade. In the event such weighted average quality for any numerical grade is not met by the weighted average quality of the grain loaded out which is applicable to such numerical grade, any car of grain falling below such weighted average quality, even though within the numerical grade, may be rejected by Commodity, or accepted and settlement, as provided in section 10, made for the difference between the value of such car of grain and the value of grain of the weighted average quality shown on the warehouse receipts and accompanying documents calling for the numerical grade.

For the purposes of (i) and (ii) above, to the extent that grading factors are not shown on the inspection certificate, delivery of the numerical grade thereon specified is to be governed by official U. S. Grain Standards; shall satisfy the warehousemen's obligation (except as to protein content of wheat); it being specifically understood and agreed, however, that this provision shall not be construed as permitting the warehousemen to deliberately take advantage of the tolerances allowed under the U. S. Grain Standards Act or to depart from ethical warehousing practices.

(c) Upon the surrender of warehouse receipts representing grain subject to the terms of this agreement which is stored commingled at a location where official grades and quality determinations are not available, the warehousemen shall load out or deliver grain of the same class and quantity and of a grade and quality fairly representative of the grain described on the warehouse receipts and accompanying documents.

(d) With respect to handling only grain not identity preserved, the warehousemen shall load out grain of the same class and quantity and of a grade and quality fairly representative of the grain described on the certificates provided for in section 9 (b).

(e) Upon surrender of warehouse receipts representing the grain which is stored identity preserved, and in the case of grain which is tendered to the warehousemen for handling only on an identity preserved basis, the warehousemen shall load out or deliver the identical grain received.

(f) In connection with the load out of and settlement for wheat, the warehousemen shall be allowed a protein tolerance of 3/10 of one percent from that determined by an official protein laboratory or a protein laboratory approved by Commodity and shown on the warehouse receipt or other documents. With respect to warehousemen at locations where official grades are not available, such protein tolerance shall not be allowed unless the protein content of such lot of the wheat received by the warehouse is determined by such an official or approved protein laboratory.

(g) If the Official Grain Standards of the United States for the grain received are changed after the grain is received in storage and before it is loaded out, the provisions in effect at the time the grain was received into storage shall govern the responsibility of the warehousemen in surrendering out the grain and settling with respect to the grain loaded out.

12. DETERMINATION OF WEIGHTS AND GRADES ON LOAD OUT - The [illegible] of all grain loaded out by the warehousemen, whether stored or handled under this agreement, shall be determined by official weighmen on the basis of official weights and grades at the warehouse [illegible] official weighmen.

(8)

are not available at such point, on the basis of official weights and/or grades at destination or at the inspection point where on the outbound order furnished the warehouseman, which unless otherwise agreed, shall be the customary function on the basis of enlargement of an inspector licensed under the United States Grain Standards Act. Such inspection shall be for the account of Commodity. In the event either party calls for federal appeal reinspection, such reinspection shall be final and the expense thereof shall be for the account of the party requesting reinspections.

12. SETTLEMENTS WITH SHIPPERS - Settlement with respect to each individual warehouse for differences in value between the grain brought out and the grain described on the warehouse receipts and accompanying documents or on the certificates provided for in section 9 (b) shall be made in accordance with this section: Provided, That:

(i) In the case of warehouses at locations where official weights and grades are available, Commodity shall have the discretion to reject grain not meeting the applicable requirements of section 11, and the warehouse shall not be given credit for loading out the quantity of grain rejected. If the grain is rejected at destination, Commodity shall sell such grain for the account of the warehouseman unless the warehouseman has requested that rejected grain be held for his account. Objection at destination shall be on the basis of official grades at the loading warehouse location.

(ii) In the case of warehouses at locations where official weights and grades are not available, Commodity shall have the discretion to reject grain not meeting the applicable requirements of section 11, but the warehouseman shall pay Commodity the value of the grain which should have been delivered rather than replacing such rejected grain. Commodity shall sell rejected grain for the account of the warehouseman unless the warehouseman has requested that rejected grain be held for his account.

(b) Subject to the provisions of section 11, the warehouseman and Commodity shall make settlement with respect to each loading under the establishment between the value of the quantity and quality of the contracted grain which is loaded out of the warehouseman from locations where official weights and grades are not available and which is accepted by Commodity, and the grain described on the warehouse receipts and accompanying documents surrendered by Commodity or on the certificates provided for in section 9 (b), on the basis of cash prices current in the applicable terminal market as of the date of inspection of the final shipment under the applicable order to load out, except that the warehouseman shall not receive any credit for overdelivery in quality or between loading orders.

(c) Subject to the provisions of section 11, the warehouseman and Commodity shall make settlement for the differences between the value of the quantity and quality of the contracted grain which is loaded out by the warehouseman from locations where official weights and grades are not available and which is accepted by Commodity, and the grain described on the warehouse receipts and accompanying documents surrendered by Commodity or on the certificates provided for in section 9 (b), on the basis of cash prices current in the applicable terminal market as of the date of the final shipment under the applicable order to load out is accepted by the carrier: Provided, That, the warehouseman shall be allowed a quantity tolerance of 1/8 of one percent on the gross loading weight of short weight cars with respect to which the carrier's report of the condition of the car shows evidence of actual loss. The value of overdelivery in quality of such kind of grain shall be applied against the value of underdelivery in quality of the same kind of grain until all grain of such year's crop has been shipped, sold, or otherwise disposed of, or during such period of time as may be mutually agreed upon, except that the value of any underdelivery in quality of grain delivered which is determined to be of average grade shall not be eligible for offset. The value of any overdelivery in quality not so offset in making settlement for the year's crop, or during such agreed period of time, whichever is applicable, shall be dropped.

(d) In making settlement for load out of grain which is stored identity preserved, or grain which is tendered to the warehouseman for loading only as an identity preserved basis, the warehouseman shall be liable for shrinkage in weight and for deterioration in the quality of the grain only in the event such shrinkage or deterioration is quality exceeds that the delivery is not due care or its failure to provide appropriate conditioning services: Provided, That, if such grain is commingled with other grain, the warehouseman's liability shall be as defined in sections 11, 13, in the last sale.

14. RACKED GRAIN - Subject to all other provisions of this agreement, the warehouseman may store the grain either in bulk, or racked elevators, in making out orders the holder of the warehouse receipts representing grain received in racked elevators shall not be entitled to make out orders for grain received in bulk. Grain received in racks is to be delivered into empty cars shall be taken and retained by the warehouseman for the account and subject to order of the owner.

15. INSURANCE - Without in any way limiting his obligation under the other provisions of this agreement, the warehouseman shall insure and at all times keep insured, in his own name, all the grain for the full market value thereof (rather than the support price), against loss or damage by fire, lightning, inherent explosion, windstorm, cyclone, or tornado, and, in the event of loss or damage to the grain, or to the warehouse, whether or not such loss was insured against, he shall immediately notify Commodity and the holders of the warehouse receipts and the certificates provided for in section 9 (b) representing such grain, as the holders appear on the records of the warehouseman, and he shall or his own expense promptly take the steps necessary to collect any moneys which may be due as indemnity for such loss or damage, including the bringing of suit, and, as soon as collected, shall pay to the holders of such warehouse receipts and certificates such moneys as may be collected for the loss or damage. For purposes of this section, "full market value" shall mean the value required by law to be used by underwriters in paying for losses of grain insured for the actual cash value. The warehouseman shall pay to the holders of the warehouse receipts and certificates, in addition to the insurance proceeds, any amount by which the insurance proceeds are less than such full market value, whether resulting from failure to collect in full from the insurer, failure to obtain a policy providing full coverage, or failure to report the total value of grain on hand on the last reporting date under a reporting form of policy. In the event the warehouseman insures against hazards to the grain not specified herein, such insurance shall inure to the benefit of the holders of the warehouse receipts and certificates.

16. TARIFF REQUIREMENTS - COMMODITY TENDERED - (a) The warehouseman shall observe the transportation Agency's lawful tariffs and loading and unloading requirements, and shall indemnify Commodity against losses in weight due to the warehouseman's error in weighing or failure to remove all the grain from the transportation conveyances on unloading. The warehouseman shall indemnify Commodity against minimum weight penalties and demurrage (including storage in transportation conveyances) charges where incurred due to circumstances beyond the warehouseman's control. The warehouseman shall transmit all demurrage and storage charges which are recoverable or which are assessed by the carrier or sustained thereunder, and all connecting carrier charges resulting from diverting or reforwarding in accordance with instructions issued by Commodity. If adequate supply cars are available on the warehouse location, the warehouseman shall reimburse Commodity for any excess freight charges resulting from the unreasonable refusal of demurrage which are not offset by savings in freight charges resulting from diversion of cars.

(b) Except as otherwise directed by Commodity, the warehouseman shall hold not subject to the provisions of this section, insured for demurrage to the own name only freight and forwarding bill, transit demurrage or credit

slip in connection with the grain, or [redacted] the period of time required by and in accordance with the carrier's lawful published tariffs. Immediately upon receipt of any such freight or warehouse bill or transit voucher or credit slip, the warehouseman shall complete and forward to the holder of the warehouse receipt, or Commodity, as the case may be, a statement showing the warehouseman's name and location of the warehouse, the origin carrier, the original shipping and billing point, full inbound route and junction points, date and number of the freight bill, date and number of the bill-of-lading, the kind of grain represented, the transit weight (not previously used), the freight rate to the transit point, the amount collected and the number of second transit stops. The warehouseman may use any freight bill or transit voucher slip which comes into its possession in connection with the grain and he or Commodity shall take all steps necessary to secure Commodity, or the shipper depositing tonnage with the warehouseman, transit protection comparable to and of value equal to that provided by the original billing, subject to all other applicable provisions of this agreement. The warehouseman, in connection with the sale, transfer, or loading out of any of the grain may substitute for the grain shipped under any such freight bill or transit voucher or credit slip, in accordance with the request of Commodity or the owner of the grain, other grain and valid freight bills or transit voucher or credit slips of value equal, and transit arrangements comparable to those described in the statement furnished to Commodity of the holder of the warehouse receipt. If the warehouseman and the holder of any warehouse receipt representing the grain agree, there may be substituted a quantity of grain and billing for a quantity of grain other than and not less obliged by rail equivalent in value to the grain and billing received. In either event the warehouseman and the holder of the warehouse receipt shall adjust any differences in value due to such substitution.

13. [illegible] WHEN SCHEDULE OF RATES APPLY - Charges for services under this agreement shall be at the rates specified in the Schedule of Rates in effect when such services are performed. Rates shall be computed on the basis of the net quantity of grain received in the warehouse, except where otherwise provided in the Schedule of Rates, and except that, during any handling or storing grain owned by Commodity identity preserved or specially binned shall be computed on a grain quantity basis. The period for which the Schedule of Rates shall apply shall begin with the date each lot of the grain is deposited in the warehouse, or the date grain not otherwise subject to the terms of this agreement is purchased by Commodity in store, and shall end as follows:

(i) In the event the grain is shipped by Commodity, storage charges shall cease upon the date specified in the shipping instructions issued by Commodity or the date shipment is accepted by the carrier which ever is earlier, unless a delay is occasioned by circumstances beyond the warehouseman's control, then on the date shipment is accepted by the carrier.

(ii) In the event the warehouse receipts are sold or transferred to any person not entitled to the benefits of this agreement, charges under this agreement shall cease on the date of transfer. Commodity shall notify the warehouseman of the date of transfer and shall affix to the warehouse receipts prior to transfer a statement showing the period for which the rates hereunder are applicable, and the warehouseman shall not charge for services rendered during that period an amount in excess of that computed in accordance with the rates in effect hereunder during that period.

(iii) In the event of loss or damage to the grain from insurable causes, all accrued charges provided in the Schedule of Rates and/or service payable with respect to the grain lost or damaged shall be paid up to the cease as of the date of loss or damage.

14. PAYMENT OF CHARGES - (a) At locations where official weights and grades are available

(i) As of June 30, September 30, and December 31, upon presentation of proper invoice, Commodity shall pay all charges due and unpaid on the grain in store represented by warehouse receipts in possession of the Commodity Offices and not ordered out as of that date.

(ii) Upon termination of the period for which the Schedule of Rates applies for any lot of the grain (i.e., when grain is loaded out, lost, damaged, or sold or transferred to storage), and upon presentation of proper invoice, Commodity shall pay all charges due and unpaid thereon.

(iii) In the event any invoice rendered by the warehouseman for services performed under this agreement has not been paid or returned for correction within 30 days after the date such invoice is received in the PMA Commodity Office, Commodity shall, upon demand of the warehouseman, make an advance to the warehouseman of not less than 90% of the amount of such invoice, if such advance proves to be in excess of the amount due, the warehouseman shall repay the excess amount to Commodity.

(b) At locations where official weights and grades are not available

(i) With respect to the grain acquired by Commodity under each price support program and represented by warehouse receipts in the possession of PMA Commodity Offices on the maturity date or dates specified for the program in the applicable price support bulletin, Commodity shall, as of such date or dates and without presentation of invoices, make a provisional payment in the amount specified in the applicable Schedule of Rates. Such payment shall not be construed to be made in settlement of charges on any particular lot of grain, and the amount so paid shall be offset against any invoice subsequently rendered for charges in connection with grain stored under this agreement to the properties that the quantity covered by such invoice bears to the quantity on which the provisional payment was determined. Any amount provisionally paid to the warehouseman which is not offset shall be repaid by him to Commodity upon termination of this agreement.

(ii) As of June 30 and December 31, upon presentation of proper invoice, Commodity shall, subject to the right of offset provided in (i)(ii) above, pay all charges due and unpaid on the grain in store represented by warehouse receipts in possession of PMA Commodity Offices and not ordered out as of that date.

(iii) Upon termination of the period for which the Schedule of Rates applies for any lot of the grain, and upon presentation of proper invoice, Commodity shall, subject to the right of offset provided in (i)(ii) above, pay all charges due and unpaid thereon unless the warehouse receipts were transferred with warehouse charges for the account of the purchaser.

(iv) In the event any invoice rendered by the warehouseman for services performed under this agreement has not been paid or returned for correction within 30 days after the date such invoice is received in the PMA Commodity Office, Commodity shall, upon demand of the warehouseman, make an advance to the warehouseman of not less than 90 percent of the amount of such invoice, if such advance shall be in excess of the amount due, the warehouseman shall repay the excess amount to Commodity. Any amount provisionally paid to the warehouseman for charges in connection with grain stored under this agreement to the properties that the quantity covered by such invoice bears to the quantity on which the provisional payment was determined. If such advance payment is not offset, any amount provisionally paid to the warehouseman shall repay the excess amount to Commodity.

(c) The warehouseman shall not make any charges for any services not covered by this agreement or the applicable Schedule of Rates [illegible] the grain unless such services or storing is performed upon written [illegible]

RECEIVED JUN 26 1950 FARM ADMINISTRATION

[redacted]

Warehouseman elects to terminate this agreement on any renewal date, and at the time of such termination there is stored in the warehouse grain which has not been stored for the complete period used in computing charges, the storage charges with respect to such grain, whether paid or not, shall be adjusted to the storage charges for such entire period in proportion to the part of such period during which such grain was stored.

23. DESCRIPTIVE HEADINGS - The descriptive headings of the various sections hereof were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

24. EXECUTION - This agreement shall be executed by duly authorized representatives of Commodity and the warehouseman, and shall not be amended or superseded except by written Agreement executed in the same manner as this agreement.

All reporting requirements of this agreement have been approved by, and subsequent reporting and record keeping requirements will be subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

COMMODITY CREDIT CORPORATION

By [signature] DISTRICT MANAGER

ROOM 217 - 1114 COMMERCE STREET

(Title) DALLAS 2, TEXAS

SHANNON ELEVATOR

(Warehouseman)

JUN 1 1950

By O. L. Shannon

owner

(Title)

In presence of Dallas Mail Room

APPROVED

JUN 1 1950

U. S. DEPARTMENT OF AGRICULTURE
PRODUCTION AND MARKETING ADMINISTRATION
COMMODITY CREDIT CORPORATION

SCHEDULE OF WAREHOUSES
COVERED BY UNIFORM GRAIN STORAGE AGREEMENT NUMBER A74-1-000-515

WDS NO.	1. ELEVATOR KNOWN AS	2. LOCATION AND ADDRESS	3. RAILROAD ON WHICH LOCATED *	4. TOTAL CAPACITY OF ELEVATOR
8-7475	Elev. A	Sudan, Texas	Santa Fe	80,000 bu.
"	" C (Flat)	" "	" "	160,000 bu.
"	" D (Flat)	" "	" "	160,000 bu.

RECEIVED
JUN 16 1950

Signed O. L. Shannon
(WAREHOUSEMAN)

* Name of railroad over which corrier to which grain will be delivered for

COMMODITY CREDIT CORPORATION
Form 32
(1-25-51)

U. S. DEPARTMENT OF AGRICULTURE
PRODUCTION AND MARKETING ADMINISTRATION
COMMODITY CREDIT CORPORATION

BOND NO. 1315009

WAREHOUSEMAN'S BOND - STORAGE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, That the undersigned O. I. Shannon dba Shannon Elevator, Dulan, Texas (address) (hereinafter referred to as the Principal) as principal, and the National Surety Corporation, a corporation of the State of New York, as surety (hereinafter referred to as the Surety) with offices located in the County of Dallas, State of Texas, (location of the office of the Surety in the State where the warehouse is located) are held and firmly bound, unto Commodity Credit Corporation and to any agency or person who may be injured by a breach of the Agreement(s) hereinafter described, (hereinafter referred to as the Obligees), for their use, in the principal sum of Fifty Thousand Dollars ($ 50,000.00) for the payment of which well and truly to be made, the Principal and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THESE OBLIGATIONS ARE SUCH THAT

WHEREAS, The Principal has made application to Commodity Credit Corporation for a Uniform Grain Storage Agreement(s), copy(s) of which Agreement(s) with respect to a warehouse(s) located at Dulan, Texas (Elevator A, C, & D) is attached hereto as Exhibit(s)* and made a part hereof;

NOW, THEREFORE, if said Agreement(s) shall be executed this bond shall be effective from the date when the Agreement(s) is executed and shall continue in full force and effect until the 31st day of May, 19 52, and thereafter from year to year unless otherwise terminated or cancelled as hereinafter provided; but if the Principal shall well and truly perform and fulfill all of the undertakings, covenants, terms, conditions, and agreements of said Agreement(s) during the original term of said Agreement(s) and any renewal thereof, and during the life of any guaranty required under the Agreement(s), and shall well and truly fulfill and perform all other obligations as a warehouseman in connection with any commodity stored or handled under said Agreement(s), and all duly authorized modifications of said Agreement(s) that may hereafter be made, notice of which modifications to the Surety being hereby waived, then the obligations of the Principal and the Surety on this bond shall become null and void; otherwise said obligations shall remain in full force and effect;

*The copy(s) of such Agreement(s) executed on this bond must be appropriately identified as Exhibit(s) A, B, C, etc., and as instructed in the space provided on the face of the bond.

CCC-WAREHOUSE-WAREHOUSEMEN

PROVIDED, HOWEVER, that this bond is executed by the Surety and accepted by Commodity Credit Corporation upon the following express conditions, which shall become precedent to any right of recovery hereunder:

FIRST, Regardless of the number of years this bond shall continue in force and of the number of annual premiums that shall be payable or paid, the Surety shall not be liable hereunder to the Obligees on account of losses sustained in connection with commodity stored under said Agreement(s) for a larger amount in the aggregate than the amount of this bond.

SECOND, This bond may be cancelled at any time by the Surety by giving written notice to Commodity Credit Corporation of its intention to cancel this bond and all liability thereunder shall terminate 90 days after the date of the receipt of such notice, except the rights of the Obligees shall not be affected by such notice as to any claims arising hereunder, whether presented or not, before the effective date of such cancellation notice.

SIGNED, SEALED AND DATED this 24th day of May, 19 51

Shannon Grain & Elevator and/or
Commerce and Warehouse Company (SEAL)

By O. L. Shannon
(Name)

Owner and Manager
(Title)

National Surety Corporation (SEAL)

Patricia Hamel
(Name)

T. M. Delaney, Attorney in Fact

(NOTICE TO SURETY - Correspondence pertaining to amendment, renewal, or cancellation of this bond, should be directed to the Contracting Officer of Commodity Credit Corporation who signed the Agreement for Commodity Credit Corporation, and should refer specifically to the warehouse(s) involved and the location thereof.)

Bond

RECEIVED
Fort Commodity Office
JUN 11 1951
Storage & Handling Sec.
Dallas

District Court of the United States of America
Northern District of Texas

I, GEO. W. PARKER, Clerk of the District Court of the United States in and for the Northern District of Texas, do hereby certify the foregoing to be true and correct copies of Government's exhibits 1, 2 and 3, which were inadvertently omitted from the certified record mailed to you February 9, 1953; Together with a true and correct copy of the Stipulation filed this May 27th, 1953, all of which are mailed to the United States Court of Appeals, New Orleans, Louisiana, as a supplemental record in cause No. 780 Criminal, entitled United States of America as Plaintiff against O. L. Shannon as Defendant, as fully as the same remains on file and of record in said cause, in my office at Lubbock, Texas.

In Witness Whereof, I hereunto subscribe my name, and affix the seal of said Court, at my office in the city of Lubbock, Texas in said District, this 27th day of May in the year of our Lord one thousand nine hundred and Fifty-Three and of American Independence the 177th year.

GEORGE W. PARKER,
(Seal) Clerk of said Court.
By OLIVE FLUKE,
Deputy.

[fol. 603] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 14,416

O. L. SHANNON

versus

UNITED STATES OF AMERICA

MINUTE ENTRY OF ARGUMENT AND SUBMISSION, DATED NOVEMBER 4, 1953—Omitted in Printing

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[fol. 604] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 14416

O. L. SHANNON, Appellant,

versus

UNITED STATES OF AMERICA, Appellee

Appeal from the United States District Court for the Northern District of Texas

OPINION—Filed January 15, 1954

Before Hutcheson, Chief Judge, and Borah, and Rives, Circuit Judges

BORAH, Circuit Judge:

Appellant, O. L. Shannon, was tried and convicted in the district court by a judge and jury on an indictment drawn under Section 15 (c) of the Commodity Credit Corporation Charter Act, Public Law 806, 80th Congress, 62 Stat. 1070, 15 U. S. C. A. § 714m (c). Section 15 (c) of the Act pro-[fol. 605] vides: "Whoever shall willfully steal, conceal, remove, dispose of, or convert to his own use or to that of another any property owned or held by, or mortgaged or pledged to, the Corporation, shall, upon conviction thereof,

be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both."

The indictment in this case contained 47 counts, six of which were dismissed by the court on motion of the Government. The jury found the defendant guilty on the others and the court sentenced him to five years imprisonment on each of counts 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 45, and 46, to run concurrently as to those counts only. It also sentenced defendant to two years imprisonment on each of counts 24, 43, and 47, to run concurrently as to those counts, and ordered that the sentences on the first named 38 counts as a group and the sentences on the last three named counts as a group shall run separately and cumulatively and consecutively. The defendant was also fined $5,000 on each of counts 24, 43, and 47, but the execution of the sentences on said three counts was suspended and defendant was placed on probation for three years to commence after his liability under the above five year sentences on the 38 counts had been lawfully terminated and conditioned upon payment of the fines imposed within a specified period and his exercise of diligent and earnest efforts to make restitution to the Government [fol. 606] within the earliest reasonable time. All of the counts charged that the defendant did willfully, knowingly, and unlawfully steal, conceal, remove, dispose of and convert to his own use a described commodity (wheat or grain sorghum) which was then and there the property of the Commodity Credit Corporation, hereinafter referred to as the C.C.C. In each count the time and place of the particular offense and the quantity of grain were stated.

It affirmatively appears that there were three storage agreements between C.C.C. and appellant and that the latter, doing business as Shannon Elevator, is referred to in the agreements as the warehouseman. The last of these agreements was dated June 1, 1950, under the terms of which the appellant's storage facilities at Sudan, Texas, became subject to a single storage agreement, and all grain of C.C.C. stored in said facilities was deemed to be commingled, and the warehouseman was obligated at his own expense to take all necessary steps to keep it in condition, and to condition any that was deteriorating, to the extent that he had the

proper equipment. The agreement also required that the warehouseman "shall at all times maintain in the warehouse indicated on the warehouse receipts and in which the grain was originally deposited for storage a stock of grain of the quantity, class, grade, and quality which he is obligated to deliver under the warehouse receipts"; that the warehouseman "shall upon surrender of warehouse receipts representing the grain stored in such elevator(s) or [fol. 607] warehouse(s), when so requested by Commodity, deliver the grain"; and that all the grain accepted by the warehouseman for storage "shall be * * * loaded out and shipped as requested by the owner or other authorized person or agency * * *." There is no question here but that appellant loaded out, shipped, delivered and sold grain stored under the agreement without being "so requested by Commodity * * * or other authorized person or agency * * *."

Appellant contends: (1) That the court erred in denying his motions for judgment of acquittal because (a) the grain described in the indictment was his property under the grain storage agreement and he could not be guilty of a willful theft or conversion thereof and (b) the Government totally failed to produce any physical inventory of appellant's stocks or other tangible evidence of shortage and conversion of the aforesaid grain and (c) there was no showing made by the Government of appellant's intent to steal or convert the grain and there could have been no such intent because appellant had the legal right to sell it to avoid spoilage, and (2) that the court erred in denying a motion for a new trial on the ground of prejudicial and improper statements made by the United States Attorney and his assistant in their arguments to the jury.

Appellant's claim of ownership is bottomed upon the argument that under the grain storage agreement there was a sale of the grain to the warehouseman and not a bailment. [fol. 608] In the recent case of *Dawson v. United States*, 5 Cir. 203 F. 2d 201, this court had occasion to consider a C.C.C. grain storage agreement entered into in the State of Texas and in rejecting a like argument there advanced as wholly untenable we said: "The primary obligation of the warehouseman was to store, insure, load out, and ship, grain at the request of the holder of the warehouse receipts,

in whom was the legal title and ownership in common of these commodities;" and that the warehouseman "only held the grain in trust as bailee for the holders of the warehouse receipts." The uncontroverted evidence in this record shows that between 95 and 98 per cent of those receipts were held by C.C.C. and not appellant, and consequently as in the Dawson case we conclude that there was title in the C.C.C. to the commodities described in the indictment.

This brings us to the question as to whether there was evidence of shortage and conversion of the Government owned grain. J. W. Mize, an auditor with the office of Audit, Production and Marketing Administration, United States Department of Agriculture, testified that he took a physical inventory of the amount of grain in store in the Shannon Elevator on August 20 and 21, 1951, and found a shortage of 29,956,190 pounds of grain sorghum and 38,218.80 bushels of wheat. The Government witnesses N. K. Parrish, who was in the grain business at Lubbock, Texas, Harry Hitch, Assistant General Manager of Uhlmann Elevators Company, Fort Worth, Texas, and Hugh E. Corbin, Chief Accountant of Rock Island Grain Company, Fort Worth, Texas, [fol. 609] gave evidence of shipments of grain by appellant to their respective businesses and Corbin testified that appellant made further shipments to the Transit Grain Company at Fort Worth. These witnesses identified each shipment by date, car number, quantity and nature of grain shipped, the manner in which it was handled by the consignee, and the point from which shipped which in all instances was Sudan, Texas. P. M. Miller, Administrative Officer of the Production and Marketing Administration Commodity Office at Dallas, Texas, testified that C.C.C. ordered grain out of warehouses by means of loading orders and that his office is the only one which can give loading orders for grain stored in the State of Texas and owned by C.C.C. That no order of any kind was ever issued to Shannon Elevator to load out such grain to Parrish or to Uhlmann Elevators Company, or to Transit Grain Company, and that with one single exception not here pertinent no such order was issued to load out to Rock Island Grain Company. He further testified that C.C.C. ordered out all of its grain which was stored with Shannon Elevator, but the orders were not competely filled. John J. Bachmann, Chief of

Accounting Investigations in the Department of Agriculture, testified that he was in charge of the accounting investigation of the records and books of the Shannon Elevator for the years 1949, 1950, and 1951, particularly with respect to appellant's transactions in grain sorghum and wheat, and that appellant was never in a long position at any time after October 15, 1949. He stated, as of the date of each of the undismissed counts, what percentage of the [fol. 610] grain in storage in appellant's facilities belonged to C.C.C., and applying such percentages to the shipments established by the witnesses Parrish, Hitch, and Corbin, he stated the amount of grain in each shipment which was owned by C.C.C. The appellant, a witness in his own behalf, admitted that he was materially short, that he failed to deliver to C.C.C. all the grain for which it held warehouse receipts, and that he loaded out, shipped, and sold [1] grain to the aforementioned dealers and others. This disposes of the question of shortage.

The appellant next contends that the Government did not discharge its burden of proving that he "willfully" converted the grain. We think this issue was properly submitted to the jury under appropriate instructions and that there was evidence sufficient to convince a fair minded jury beyond a reasonable doubt that the requisite criminal intent was present. For example, appellant was unable to deny that on or about August 9, 1951, he certified to C.C.C. that he had a correct and just claim in the sum of $41,111.17

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[1] Appellant gave this testimony:

"Q. I will ask you if you said this in that statement: Following is a list of persons or concerns to whom I have sold Commodity Credit grain. They bought the bulk of this grain. There are others whose names I am unable to furnish. N. K. Parrish, broker, Lubbock, Texas. Transit Grain Company, Fort Worth, Texas; Rock Island Grain Company, Fort Worth, Texas. Uhlmann Elevators, Fort Worth, Texas. Sudan Livestock & Feeding Company, Sudan, Texas. Robstown Farm Commodities, Inc., Robstown, Texas.

"A. Well, I did sell them grain that I had stored for Commodity Credit."

for storage charges on 35,675,682 pounds of grain "on store," but the C.C.C. refused payment because its representatives "had been out there and couldn't get their [fol. 611] grain." This evidence of an ineffectual attempt by appellant to conceal his activities is consistent with the testimony of the Government auditor Mize [2] that appellant attempted to forestall the Government from measuring his inventory because of knowledge on his part that he had sold the grain and applied the proceeds to his own use. The facts of the case thus carry with them convincing evidence of the willful doing of the things which constitute the crimes charged. It follows that appellant's claim that he had a right to sell the grain "to prevent further spoilage" is a false issue which we need not labor here.

We have carefully considered appellant's contention that his motion for new trial should have been granted because of improper statements made by the United States Attorney and his assistant in their arguments to the jury. These statements, strictly speaking, overstepped the bounds. It is quite another thing to say that these statements constitute prejudicial error. In the first place, this was not a weak case and it is hard for us to imagine that the minds

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[2] Mize testified:

"Well, at that time he told me that he was short of grain and that he wondered if it wouldn't be possible for me to forget about measuring his inventory at that time and of course come back at a later date, * * *."

* * * * * * *

"Well, * * * it's a policy of our office after any time of audit, * * * to discuss the finding with the contractor, or in this case Mr. Shannon, and of course I pointed out to him the quantity of shortage which I determined, and of course he stated there that, he told me that the sales proceeds had gone into the warehouse construction and at the present time he would be unable to replace that shortage. He also stated that he contemplated at harvest time he would be able to acquire something like 15 million pounds of milo, and that with some time he could possibly clear himself of this condition, which was the shortage."

[fol. 612] of the jurors would be so influenced by such incidental statements during this long trial that they would not appraise the evidence objectively and dispassionately. In the second place, it does not appear that the court was requested to rebuke counsel or to charge the jury to disregard his remarks, both of which are usually considered proper practice in laying a predicate for an assignment of error.

On the whole case, it cannot be said that any substantial rights of the parties were affected by acts of the court and of counsel for the Government. 28 U.S.C.A. §2111; Fed. Rules Cr. Proc. rule 52 (a), 18 U.S.C.A.; *Meyer v. U. S.*, (C.C.A.) 258 F. 212; *Hunter v. U. S.*, (C.C.A.) 264 F. 831; *Billinglsey v. U. S.*, (C.C.A.) 274 F.86.

Since we find no prejudicial error in the record the judgment is affirmed.

[fol. 613] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 14,416

O. L. SHANNON,

versus

UNITED STATES OF AMERICA

JUDGMENT—January 15, 1954

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.